



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

May 14, 2008

Mr. Sherrell White  
1814 River Chase  
Hixon, Tennessee 37343

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4865**

Subject: DIRECTOR'S ORDER NO. WPC08-0055  
LITTLE DEBBIE PARKWAY  
HAMILTON COUNTY, TENNESSEE

Dear Mr. White:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Knoxville  
DWPC – Compliance File  
OGC



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DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
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Nashville, TN 37243-1534

May 14, 2008

Mr. Barry Daugherty dba Remax Realty Co.  
6111 Shallowford Road, Suite 105  
Chattanooga, Tennessee 37421

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4858**

Subject: DIRECTOR'S ORDER NO. WPC08-0055  
LITTLE DEBBIE PARKWAY  
HAMILTON COUNTY, TENNESSEE

Dear Mr. Daugherty:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

May 14, 2008

Mr. Larry Armour dba  
Armour Commercial Real Estate  
Chattanooga, Tennessee 37363

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4841**

Subject: DIRECTOR'S ORDER NO. WPC08-0055  
LITTLE DEBBIE PARKWAY  
HAMILTON COUNTY, TENNESSEE

Dear Mr. Armour:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Knoxville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>SHERRILL WHITE;</b>	)	
	)	
<b>BARRY DAUGHERTY dba REMAX REALTY COMPANY;</b>	)	
	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>and</b>	)	
	)	
<b>LARRY ARMOUR dba ARMOUR COMMERCIAL REAL ESTATE</b>	)	
	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NO. WPC08-0055</b>
	)	

**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

**II.**

Sherrill White (hereinafter “Respondent White”) is a resident of the State of Tennessee and was the owner/developer of a residential subdivision located on Little Debbie Parkway, in Hamilton County (hereinafter “the site”). Service of process may be made on Respondent White at 1814 River Chase, Hixson, Tennessee 37343.

### III.

Barry Daugherty d/b/a Remax Realty Company (hereinafter “Respondent Daugherty”) is the owner/developer of property at the site. Service of process may be made on Respondent Daugherty at 6111 Shallowford Road, Suite 105, Chattanooga, Tennessee 37421.

### IV.

Larry Armour d/b/a Armour Commercial Real Estate (hereinafter “Respondent Armour”) is the owner/developer of property at the site. Service of process may be made on Respondent Armour at 2127 Ooltewah-Ringgold Road, Chattanooga, Tennessee 37363.

## JURISDICTION

### V.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

## **VI.**

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, have violated the Act.

## **VII.**

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter “TNCGP”) may be obtained by submittal of a completed Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## **VIII.**

T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **VIII.**

The wetland, referred to herein, is "waters of the state" as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," this wetland has been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **FACTS**

### **IX.**

On June 20, 2005, the division received a complete application from Respondent White for coverage under the TNCGP for the construction of a residential subdivision on 11 acres of land at the site. Respondent White was issued coverage under the TNCGP that became effective August 9, 2005, and was assigned tracking no. TNR110756.

### **X.**

On June 14, 2007, the division received a complete ARAP application from Respondent Daugherty requesting authorization to fill .043 of an acre of a non-isolated wetland located at the site in the flood plain for Wolftever Creek, for the purpose of installing a single sewer utility line. Respondent Daugherty was issued General ARAP authorization that became effective June 21, 2007, expires June 21, 2008, and was assigned tracking no. NR0701.056.

### **XI.**

On December 7, 2007, Respondent Armour submitted an application for TNCGP coverage for the construction of a commercial development on 3.4 acres of land at the site. Respondent Armour was issued coverage under the TNCGP that became effective March 13, 2008, and was assigned tracking no. TNR111490.

### **XII.**

On January 11, 2008, division personnel conducted a site inspection and found that an unauthorized sediment trap had been built over part of a wetland at the site and that approximately .24 of an acre of the .28 acre wetland had been filled-in. Respondent Daugherty's ARAP authorization, effective June 21, 2007, to fill-in .043 of an acre of the wetland was the

only ARAP authorization approved for any activity associated with the .28 acre wetland at the site, at the time of this site visit.

### **XIII.**

On January 29, 2008, the division issued a Notice of Violation (NOV) to the Respondents for violations observed during the January 11, 2008, site inspection. The Respondents were required to submit a Corrective Action Plan (CAP) to the division by February 29, 2008, to restore the wetland to its original state with the exception of the .043 acres that Respondent Daugherty had previously been authorized to alter.

### **XIV.**

During the course of conducting this investigation, the division incurred damages in the amount of THREE HUNDRED EIGHTEEN DOLLARS AND SIXTY EIGHT CENTS (318.68).

## **VIOLATIONS**

### **XV.**

By altering waters of the state without authorization under an ARAP, as described herein, the Respondents have violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or



bacteriological properties of any waters of the state in any manner not already lawfully authorized;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

### **ORDER AND ASSESSMENT**

#### **XVI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondents.

1. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order, submit for division approval, a mitigation plan to provide compensatory mitigation for the .24 of an acre of impacted wetlands located on site. The mitigation plan shall include, but not be limited to, information on hydrological inputs, depths of excavation, information on specific plantings including species, size, spacing, monitoring protocol and success criteria, long-term protection methodology, and a timetable for the proposed activities. The mitigation plan shall be submitted to the Manager of the division's Natural Resources Section (NRS) located at 401 Church Street, L&C Annex, 7<sup>th</sup> Floor, Nashville, Tennessee 37243.
2. The Respondents shall, by December 31, 2008, complete all activities outlined in the approved mitigation plan, and notify the Manager of the division's NRS at the address listed in item 1, above, upon completion.

3. The Respondents shall pay a CIVIL PENALTY of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00).
  - b. If the Respondents fail to comply with Part XVI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SIX HUNDRED TWENTY FIVE DOLLARS (\$625.00), payable within 30 days of default.
  - c. If the Respondents fail to comply with Part XVI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SIX HUNDRED TWENTY FIVE DOLLARS (\$625.00), payable within 30 days of default.
4. The Respondents shall pay DAMAGES to the division in the amount of THREE HUNDRED EIGHTEEN DOLLARS AND SIXTY EIGHT CENTS (\$318.68) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

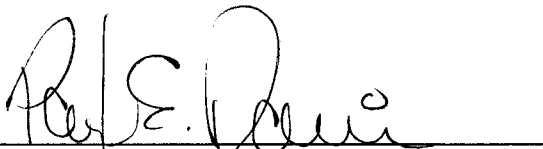
The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing.

Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this

14<sup>th</sup> day of May 2008.

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115 allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the

Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.